



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

EARL C. PINCKNEY,

Petitioner,

vs.

HENRY D. MCMASTER,
Attorney General for South Carolina;
Respondent.

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C/A NO. 6:04-22837-HFF-WMC

ORDER ADOPTING THE REPORT AND RECOMMENDATION OF THE MAGISTRATE
JUDGE, GRANTING SUMMARY JUDGMENT, AND DISMISSING THE PETITION

I. INTRODUCTION

This is a § 2254 action. Petitioner is proceeding *pro se*. This matter is before the Court for review of the United States Magistrate Judge's report and recommendation (report), in which he suggests that Respondent's motion for summary judgment be granted and the action be dismissed in its entirety.

II. STANDARD OF REVIEW

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *See Matthews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a *de novo* determination of those portions of the report to which specific objection is made, and the Court may

accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

Magistrate Judge William M. Catoe filed his report on May 20, 2005. Petitioner timely filed his objections to the report on June 2, 2005.

III. PETITIONER'S OBJECTIONS

Petitioner claims that the Magistrate Judge erred by stating that Petitioner's § 2254 action was barred by the statute of limitations. However, rather than focusing on the statute of limitations issue, Petitioner attempts to reargue the merits of his *habeas corpus* action, namely that relief should be granted because of the absence of counsel during his 1986 guilty plea for armed robbery. This Court has reviewed the objections that Petitioner raises but finds them to be without merit. Since the Court agrees with the analysis and conclusion of the Magistrate Judge, it need not address these same issues a second time.

IV. CONCLUSION

Therefore, after a thorough review of the report and the objections pursuant to the standard set forth above, and in light of the above analysis, the Court overrules Petitioner's objections, and, to the extent that it does not contradict this order, adopts the Magistrate Judge's report and incorporates it herein.

It is **ORDERED** that Respondent's motion for summary judgement is **GRANTED** and the case is **DISMISSED**.

Signed this 12th day of July, 2005, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

_____Petitioner is hereby notified that he has the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.